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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-910

GOVERNMENT OF THE VIRGIN ISLANDS and
LEROY A. QUINN, Commissioner of Finance,

Petitioners,

v.

VITCO, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENT VITCO, INC. IN OPPOSITION

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Respondent Vitco, Inc. ("Vitco") submits this brief in opposition to a petition for a writ of certiorari filed December 23, 1977. The petition seeks review of a unanimous decision of the United States Court of Appeals for the Third Circuit, holding that Vitco was not required to withhold a 30% Virgin Islands tax on dividends it paid to its United States parent corporation.

Questions Presented

1. Whether the "mirror system" of income taxation in force in the Virgin Islands includes the reciprocal of the United States income tax rule that United States source dividends received by Virgin Islands taxpayers are exempt

from United States withholding tax, thus exempting Virgin Islands source dividends received by United States taxpayers from Virgin Islands withholding tax.

2. Whether the United States statutes extending the United States income tax laws to the Virgin Islands may be interpreted to create a tax surcharge by authorizing the Virgin Islands to collect a tax on the gross investment income of United States taxpayers which in many cases will be larger than the tax on net income otherwise payable to the United States.

Statement of the Case

Vitco is a Virgin Islands corporation and a wholly-owned subsidiary of Chase Instruments Corp. ("Chase"), a New York corporation. During the years involved in this case, 1970, 1971 and 1972, Vitco carried on business only in the United States. In those same years, Vitco's taxable income was $38,660.80, $47,216.59, and $58,067.23, respectively, most of which was derived from sources outside the Virgin Islands, and Vitco paid dividends of $25,000, $50,000 and $50,000, respectively, to Chase. No income taxes payable to the Virgin Islands were withheld from these dividends. In a notice of deficiency dated July 17, 1974, addressed to Vitco, the then Commissioner of Finance of the Virgin Islands proposed assessment of a 30% tax which the Commissioner asserted that Vitco should have withheld from the dividends paid to Chase and should have remitted to the Virgin Islands Government.

On October 29, 1974, Vitco filed a petition for redetermination of this proposed deficiency in the United States District Court for the Virgin Islands. The District Court ruled that Vitco should have withheld the tax (Pet. App. B). On appeal, the United States Court of Appeals for the

Third Circuit unanimously reversed the District Court (Pet. App. A). The Court of Appeals held that Treas. Reg. § 1.1441-4(d), which proscribes a United States withholding tax on dividends paid by a United States corporation to a Virgin Islands corporation, is a valid application of the Revised Organic Act of the Virgin Islands and that a mirroring of this regulation as well as of the underlying statute bars the Virgin Islands from withholding tax on dividends paid by a Virgin Islands corporation to a United States corporation (Pet. App. 10a). The Court of Appeals found that Congress previously had utilized this type of mirroring to proscribe Guamanian withholding and thus "obviously" intended a "mirror system" of taxation to operate in this manner (Pet. App. 11a-12a). Finally, the Court of Appeals stated that its result was consistent with the "tax equality" principle established in its prior decision in *Chicago Bridge and Iron Company, Ltd.* v. *Wheatley*, 430 F.2d 973 (1970), *cert. denied*, 401 U.S. 910 (1971) (Pet. App. 12a-13a).

The Court of Appeals denied a motion for rehearing *en banc*, and petitioners now seek review in this Court.

Reasons for Denying the Writ

Under Rule 19.1 of this Court, a review on writ of certiorari will be granted "only where there are special and important reasons therefor." Rule 19.1(b) indicates the character of reasons which are sufficient to grant review, but petitioners nowhere assert any of them as a basis for review and none of them is present in this case. In fact, the withholding tax question decided by the Court of Appeals is *sui generis* to the Virgin Islands.

The only "special and important" reason that petitioners offer this Court as a basis for granting review is that the

Court of Appeals' decision will deprive the Virgin Islands of a substantial percentage of its revenues and thus will have an enormous adverse impact upon its fiscal stability. Nothing in the record supports this allegation, and petitioners offer no corroboration of their assertions. Moreover, their contention relates entirely to matters of local finance and is irrelevant to the interpretation of the governing statutes, which the Court of Appeals properly construed.[1] Petitioners' claim for relief should be addressed to Congress rather than to this Court.

I.

The Decision of the Court of Appeals Will Not Have a Disastrous Financial Impact on the Virgin Islands and Is in the Best Economic Interest of the Virgin Islands.

First, it should be pointed out that the loss of revenue that will result from the Court of Appeals' decision is not so extreme as petitioners would have this Court believe. The $4,000,000 to $6,000,000 that petitioners allege is collected annually by the withholding tax (Pet. 5) constitutes only 2.9% to 4.4% of the Virgin Islands' current operating budget of $137,000,000. A "Position Paper on 30% Withholding Tax" issued by the Economic Policy Council of the Office of the Governor of the Virgin Islands in December 1976 (the "Position Paper") states that the withholding tax makes only a "minor contribution" to Government revenues.[2]

[1] Petitioners advanced the same argument in support of their motion for a rehearing *en banc*, and the Court of Appeals denied the motion without even deeming it necessary to request opposing papers from respondent.

[2] Position Paper p. 9. A copy of the Position Paper was attached as Appendix A to respondent's reply brief to the Court of Appeals.

In addition, petitioners allege that the Virgin Islands has collected from $18,000,000 to $20,000,000 of withholding taxes that must be refunded if the Court of Appeals' decision is not reversed (Pet. 5).[3] Funds to repay these amounts are available to the Virgin Islands without causing cutbacks in governmental services. The Virgin Islands has unexercised taxing authority[4], and the Secretary of the Interior has estimated that through the expiration of industrial tax subsidies in 1978 and 1981 the annual revenues of the Virgin Islands will increase by up to $100,000,000.[5] If there is any temporary deficit after the use of these additional revenues, it should be noted that in 1976 and 1977

[3] An affidavit filed by petitioners in support of their motion for rehearing *en banc* by the Court of Appeals states that all of the taxes which would be refunded were collected during the three years prior to entry of judgment in this case on July 26, 1977, *i.e.*, since July 1974. Respondent's petition to the District Court was filed on October 29, 1974. Thus, petitioners were on notice during most of the period these taxes were being collected that their validity was being challenged and that they might have to be refunded. If petitioners now have difficulty in finding money to refund these taxes, it is their own fiscal misbehavior in failing to reserve against the possibility that they might lose this case—not the decision of the Court of Appeals—that has produced that result.

[4] Since August 19, 1976, the Virgin Islands has had the authority to impose an annual 10% income tax surcharge. Act of Aug. 19, 1976, Pub. L. No. 94-392, § 5, 90 Stat. 1195 (codified at 48 U.S.C. § 1397 (Supp. 1977)), *amending* Naval Service Appropriations Act, 48 U.S.C. § 1397 (1970). (The text of § 1397 set forth in Pet. App. 1c contains the amended language.) The Virgin Islands Executive Budget—Fiscal Year 1978 estimated that the surcharge would raise approximately $6,500,000 per annum. However, the Virgin Islands legislature has never authorized the surcharge. It ill behooves petitioners to imply to this Court that the Virgin Islands has no additional sources of revenue when for almost a year and a half it has possessed this unexercised taxing authority.

[5] Letter dated April 7, 1976 from Secretary of the Interior Kyl to Vice President Rockefeller, H. Rep. No. 94-1080, 94th Cong., 2d Sess. 5 (1976); S. Rep. No. 94-1021, 94th Cong., 2d Sess. 8-9 (1976).

Congress authorized appropriations of \$8,500,000 and \$14,000,000,[6] respectively, for the Virgin Islands. *See* Act of Aug. 19, 1976, Pub. L. No. 94-392, § 4, 90 Stat. 1195 (codified at 48 U.S.C. § 1574d (Supp. 1977)); Act of Oct. 15, 1977, Pub. L. No. 95-134, § 402, 91 Stat. 1163. The Virgin Islands therefore may realistically apply to Congress for financial assistance.[7] The Virgin Islands can also ask Congress to change legislatively the result reached by the Court of Appeals.[8]

Finally, there is a substantial body of opinion in the Virgin Islands which holds that collection of the 30% withholding tax would be detrimental to the economy of the Virgin Islands. In a July 22, 1976 letter to his constituents, Virgin Islands Congressional Delegate de Lugo stated:

> "I strongly believe that the foreign treatment of U.S. investment income in the Virgin Islands under the Cruz Bay decision is fundamentally unsound in terms of the long-range interests of our Territory. I believe that subjecting such income to a 30% withholding tax will ultimately dry up investment in the Virgin Islands to the point where there may be little left to tax."[9]

[6] The Virgin Islands will also receive its proportionate share of an estimated total payment of \$15,000,000 to be made to American Samoa, Guam and the Virgin Islands in fiscal year 1978. Tax Reduction Act of 1977, Pub. L. No. 95-30, § 407, 91 Stat. 156; S. Rep. No. 95-66, 95th Cong., 1st Sess. 37-38 (1977).

[7] In S. Rep. No. 95-332, 95th Cong., 1st Sess. 19 (1977), the Committee on Energy and Natural Resources stated:

> "We support the concept of assisting the territories when they have tax losses which are beyond their control and which cause significant problems in their local economies."

[8] For example, in 1971 Congress gave the Virgin Islands more revenues by legislatively overruling *Chicago Bridge and Iron Company, Ltd.* v. *Wheatley, supra* (Pet. 9 n.1).

Similarly, in December 1974, the Virgin Islands legislature adopted Resolution No. 730, which stated that the "mirror system" of taxation, including withholding taxes, should be modified where it creates a Virgin Islands tax larger than the tax that would be payable to the United States if the Virgin Islands were a state of the United States. Since the 30% withholding tax frequently has that effect[10], the Court of Appeals' decision not only is legally correct but also is in the best interests of the Virgin Islands.[11]

II.

The Decision of the Court of Appeals Properly Interpreted the Relevant Statutes and Is in Accord with Congressional Policy.

Petitioners ask the Court to overturn a statutory interpretation adopted by a unanimous panel of the Third Circuit Court of Appeals and recognized by the Virgin Islands for more than 50 years in the administration of its system of taxation.[12] As the balance of this brief shows, the

[9] In his letter, Congressman de Lugo also stated: "I am convinced that proposals can be developed which will address the immediate problems posed by the mirror theory without loss of revenue for the local Government."

[10] See discussion *infra* at page 14.

[11] A similar conclusion was reached by Congress in 1972 when, as noted by the Court of Appeals (Pet. App. 12a), it concluded that the Guamanian withholding tax should be eliminated because it "had the effect of seriously retarding investments by U.S. corporations in Guam." H. Rep. No. 92-1479, 92d Cong., 2d Sess. 3 (1972).

[12] Not until 1974 did the Virgin Islands generally attempt to collect the withholding tax on payments of income to United States taxpayers. Position Paper p. 1.

Court of Appeals' decision reciprocates long-standing Treasury Regulations, is consistent with recent actions of Congress in applying a similar statute, and reflects Congress' purposes in enacting the pertinent laws.

a. The Virgin Islands "Mirror System" Includes Treas. Reg. § 1.1441-4(d) and Proscribes a Withholding Tax on the Virgin Islands Source Passive Income of United States Taxpayers.

In 1921, Congress enacted the Naval Service Appropriations Act, 48 U.S.C. § 1397 (1970) (Pet. App. 1c), which in general provides that the Federal income tax laws extend to the Virgin Islands but that the proceeds collected thereby will be kept by the Virgin Islands, rather than the United States. Later interpretations of and references to the scheme of taxation created by the Naval Service Appropriations Act have dubbed it the "mirror system" of taxation and have established the general principle that in applying United States income tax laws in the Virgin Islands, the words "Virgin Islands" should be substituted for "United States" wherever appropriate. *See, e.g., Great Cruz Bay, Inc.* v. *Wheatley*, 495 F.2d 301 (3d Cir. 1974); *Chicago Bridge and Iron Company, Ltd.* v. *Wheatley, supra*; *Dudley* v. *Commissioner*, 258 F.2d 182 (3d Cir. 1958).

Petitioners contend that Section 1.1441-4(d) of the income tax regulations of the United States Treasury Department (Pet. App. 8c-9c) is not part of the United States income tax laws to be "mirrored" in the administration of those laws by the Virgin Islands. Treas. Reg. § 1.1441-4(d) provides that the United States 30% withholding tax imposed by I.R.C. §§ 871 and 881 on the United States source passive income of nonresident aliens and foreign corporations will not apply in the case of Virgin Islands taxpayers. If Treas. Reg. § 1.1441-4(d) is mirrored, the Virgin Islands cannot impose the 30% withholding tax on the Virgin Islands source passive income of United States taxpayers.

The historical background of Treas. Reg. § 1.1441-4(d), which petitioners ignore but which was before the Court of Appeals, establishes that the regulation is an essential component of the Federal income tax laws to be mirrored by the Virgin Islands. The rule contained in Treas. Reg. § 1.1441-4(d) was not first established as a result of enactment in 1954 of Section 28(a) of the Revised Organic Act of the Virgin Islands, 48 U.S.C. § 1642 (1970) (Pet. App. 1c-2c) (the "Revised Organic Act"), as petitioners suggest, but dates from 1921 and reflects Congress' understanding of how a "mirror system" operates.[13]

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[13] Section 260 of the Revenue Act of 1921, which governed the taxation of citizens of United States possessions (who are not otherwise citizens of the United States) residing in the possessions, provided that, as between it and the Naval Service Appropriations Act, the latter controlled. A regulation promulgated under Section 260 contemporaneously with the enactment of these statutes provided that payments of United States source passive income to possessions citizens generally were subject to United States withholding tax but, on the basis of the Naval Service Appropriations Act, properly stated that payments to citizens and residents of the Virgin Islands were not subject to such tax. Reg. 62, Art. 1121. This statute, and the regulation thereunder, were re-enacted in every subsequent Revenue Act and in the Internal Revenue Code of 1939. *See* § 260 of the Revenue Acts of 1924 and 1926 and §§ 252(a) and (b) of the Revenue Acts of 1928, 1932, 1934, 1936 and 1938 and the Internal Revenue Code of 1939; Reg. 65, Art. 1121 (Revenue Act of 1924); Reg. 69, Art. 1121 (Revenue Act of 1926); Reg. 74, Art. 1141 (Revenue Act of 1928); Reg. 77, Art. 1141 (Revenue Act of 1932); Reg. 86, Art. 252-1 (Revenue Act of 1934); Reg. 94, Art. 252-1 (Revenue Act of 1936); Reg. 101, Art. 252-1 (Revenue Act of 1938); Reg. Sec. 19.252-1 (Internal Revenue Code of 1939). The statutory provision was re-enacted when the Internal Revenue Code was reorganized in 1954, *see* I.R.C. § 932(b), but the non-withholding rule embodied in the prior regulations (whose language was revised to reflect enactment of the Revised Organic Act) was moved to the portion of the regulations relating to withholding.

The prior regulations referred only to individuals, whereas the new regulation applies to individuals and corporations. There is no basis for distinguishing between corporations and individuals, *see Sayre & Company* v. *Riddell*, 395 F.2d 407 (9th Cir. 1968), particularly where the relevant statute, the Naval Service Appropriations Act, draws no such distinction.

Petitioners ignore the pre-1954 history of the "mirror system" and contend that the Virgin Islands need not mirror the present United States rule of nonwithholding because it refers to and, hence, derives its authority solely from, the Revised Organic Act. They argue that the purpose of that statute was to divert to the Virgin Islands revenues previously collected by the United States and that a mirroring of Treas. Reg. § 1.1441-4(d) would defeat that purpose by taking away from the Virgin Islands the revenues generated by the 30% withholding tax (Pet. 10). The obvious failing of this argument is that in 1954 the Virgin Islands did not have authority to collect the 30% withholding tax: the United States nonwithholding rule antedated the Revised Organic Act. Petitioners cite no authority for the proposition that either the Internal Revenue Code of 1954 or the Revised Organic Act affirmatively granted to the Virgin Islands the authority to collect the 30% withholding tax, which it previously did not have, did not then attempt to obtain, and did not claim to have until 1974, twenty years later. There is no authority for that proposition.[14]

To the contrary, the technique used by Congress to overturn a Ninth Circuit decision[15] approving Guam's right to collect the 30% withholding tax under its "mirror system" demonstrates that the Court of Appeals' interpretation of the Virgin Islands "mirror system" is correct.

[14] Petitioners' citation of H. Rep. No. 1603, 83d Cong., 2d Sess. 13 (1954) (Pet. 10), as to the purpose of Congress in enacting this statute is highly misleading since the House Report deals only with excise taxes and not income taxes. The Revised Organic Act did divert to the Virgin Islands the Federal income tax on the United States source *business* income of Virgin Islands taxpayers, which theretofore had been payable to the United States.

[15] *Sayre & Company* v. *Riddell*, 395 F.2d 407 (1968), discussed below.

As the Court of Appeals noted (Pet. App. 11a), Congress did not enact a statute saying that Guam could not collect the withholding tax. Instead, it amended I.R.C. §§ 881 and 1442 to provide that the United States could not collect the withholding tax on United States source passive income paid to Guamanian corporations. *See* Act of Oct. 31, 1972, Pub. L. No. 92-606, § 1, 86 Stat. 1494. With respect to this legislation, the House Ways and Means Committee stated:

> "To eliminate the disincentive described above, your committee's bill amends the U.S. tax laws (section 1(e) of the bill) to provide that Guamanian corporations are not to be treated as foreign corporations for purposes of the 30-percent tax (sec. 881) or for the purpose of the provisions (sec. 1442) providing for the withholding of that tax. Since Guam's tax law is the 'mirror image' of the U.S. law, this means that under their tax law U.S. corporations will not be treated as foreign corporations for purposes of the 30-percent tax (sec. 881) or for purposes of the withholding of that tax (sec. 1442)." H. Rep. No. 92-1479, 92d Cong., 2d Sess. 3 (1972).

Similarily, the long-standing rule against a United States withholding tax on payments of such income to Virgin Islands taxpayers establishes the "mirror rule" that the Virgin Islands may not tax payments passing in the other direction.[16]

Petitioners' reliance on two unpublished communications of the Internal Revenue Service (Pet. 10) demonstrates the

[16] Petitioners' statement (Pet. 10) that the United States payee of Virgin Islands source dividends is "indisputably liable for the tax" is patently incorrect. It mistakenly assumes that § 881 applies to payments of United States source income to Virgin Islands residents. Since I.R.C. § 881 and its predecessors have never applied to such payments, the result sought by petitioners requires mirroring a nullity.

extent to which they have stooped in seeking support for their position. The legislative history of I.R.C. § 6110(j)(3) makes it clear that internal communications such as these may not be used or cited as legal precedent.[17] S. Rep. No. 94-938, 94th Cong., 2d Sess. 311 (1976); Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1976 309 (1976).

b. Collection of the Withholding Tax by the Virgin Islands Would Contravene Congress' Intent in Enacting the Original Virgin Islands Taxing Statute and Congress' Opposition to Withholding Taxes on Possession Source Passive Income Received by United States Taxpayers.

In addition to their argument that Treas. Reg. § 1.1441-4 (d) should not be mirrored, petitioners contend that the Court of Appeals' decision is contrary to the "plain meaning" of the relevant statutes (Pet. 8). However, what petitioners have done is to offer their "plain meaning" of a label used to describe the Virgin Islands' scheme of taxation—the "mirror system"—as a substitute for analysis of the governing statute, the Naval Service Appropriations Act, and its legislative history.

Congress enacted that act for the purpose of subjecting Virgin Islands residents to the United States income tax, for which they previously had not been liable, and thus to make the Virgin Islands Government financially self-sufficient. 61 Cong. Rec. 1724, 3173 (1921). It achieved this result by "extending" the Federal income tax to the

[17] Even a *published* ruling of the Internal Revenue Service is entitled to no greater weight than the opinion of an agency lawyer and hence is of little aid in interpreting a tax statute. *Biddle* v. *Commissioner*, 302 U.S. 573, 582 (1938); *Stubbs, Overbeck & Associates* v. *United States*, 445 F.2d 1142, 1146-47 (5th Cir. 1971); *Estate of Lang* v. *Commissioner*, 64 T.C. 404, 406-07 (1975). If they could be cited lawfully, private communications of the Internal Revenue Service should carry, if possible, even less weight.

Virgin Islands. H. Rep. No. 229, 67th Cong., 1st Sess. 7 (1921). Neither by that Act nor by any later act relating to the Virgin Islands did Congress purport to increase the total amount of tax payable to the United States and the Virgin Islands by a United States taxpayer. No decision, judicial or administrative, interpreting those statutes has had that result.

Chicago Bridge and Iron Company, Ltd. v. *Wheatley*, *supra*, interpreted the governing statutes in a manner consistent with this analysis of the legislative history. In an opinion by Judge Hastie, a former Governor of the Virgin Islands and a former United States District Court judge for the Virgin Islands, the Third Circuit Court of Appeals held that the Internal Revenue Code as a separate taxing statute in the Virgin Islands does not treat a United States corporation as "foreign" where to do so would violate the scheme of the statute, which

> "is to impose a tax obligation to the Virgin Islands equivalent to what the United States would collect on the same income, but for the mirror system." 430 F.2d at 977.

The Court also stated:

> "Congress has aided the Virgin Islands by giving them the same tax, not more, than the United States would otherwise collect on Virgin Islands business." 430 F.2d at 978.[18]

[18] Contrary to petitioners' assertion (Pet. 8), these statements were not dicta but were central to the Third Circuit's decision. Petitioners' contention (Pet. 8-9) that *Chicago Bridge* was "clearly inconsistent with the plain meaning of I.R.C. §§ 922 and 7701(a), as mirrored" is equally erroneous; when Congress overruled the result in that case, both Congressional committees explicitly stated that no inferences were to be drawn as to what constituted the appropriate interpretation of existing law in cases affected by the amendment. H. Rep. No. 92-533, 92d Cong., 1st Sess. 50 (1971); S. Rep. No. 92-437, 92d Cong., 1st Sess. 71 (1971).

The 30% withholding tax would contravene those principles and generate a tax liability for many United States taxpayers that invest in the Virgin Islands which would be larger than that payable if they had invested in the United States. It thus would create a tax surcharge on many investments in the Virgin Islands of the kind Congress never intended to impose and in 1972 acted to prevent in the case of Guam.[19] In overruling the Guamanian 30% withholding tax, the House Ways and Means Committee stated:

> "Since no deductions are allowed, the tax on this income, in many cases, is higher than the regular corporate tax would be if deductions were allowed. Even though the United States allows a foreign tax credit for taxes paid to its possessions (including Guam), this tax rate, since it is on a gross basis, is likely to be higher than the regular U.S. corporate tax rate. The fact that this income now is usually taxed at a higher rate than similar income earned in the United States has had the effect of seriously retarding investments by U.S. corporations in Guam." H. Rep. No. 92-1479, 92d Cong., 2d Sess. 3 (1972).

The Virgin Islands withholding tax is the same tax that Congress denied to Guam and thus for many taxpayers would be higher than the regular United States corporate tax on net income.[20]

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[19] Petitioners apparently attempt to disguise this tax surcharge by references to tax subsidies granted to respondent (Pet. 12). Such subsidies are granted to corporations doing business in the Virgin Islands, whereas the 30% withholding tax would be imposed on the shareholders of such corporations and would be payable whether or not the corporations have subsidies. In addition, the withholding tax would apply to interest, rents and royalties.

[20] In the case *sub judice*, a substantial portion of the dividends that Chase received from Vitco were eligible for the 85% dividends-received deduction under I.R.C. § 245 and hence to that extent were nontaxable in the United States.

Petitioners argue (Pet. 10-11) that the decision of the Ninth Circuit Court of Appeals in *Sayre & Company* v. *Riddell*, 395 F.2d 407 (1968), supports their contention that the tax equality principle of *Chicago Bridge* is incorrect. Although *Sayre* approved collection of the 30% withholding tax by Guam under its mirror system, the Guamanian mirror system differed from that in force in the Virgin Islands. When *Sayre* was decided, there was no act of Congress and there were no Treasury Regulations proscribing a United States withholding tax on the United States source passive income of Guamanian taxpayers. On the other hand, since the inception of the "mirror system" in the Virgin Islands, Treasury Regulations interpreting the governing statutes have specifically prohibited the United States from withholding tax on similar payments to Virgin Islands taxpayers. Also, of course, the result in *Sayre* was overturned by Congress in 1972. Pub. L. No. 92-606, *supra*.

Petitioners contend (Pet. 12) that, because Congress did not prohibit withholding by the Virgin Islands at the time it did so for Guam, Congress must have approved the Virgin Islands withholding tax. This argument is deficient because in 1972 the Virgin Islands was not asserting the right to collect the tax and had not done so since its "mirror system" was established more than 50 years before. Moreover, as indicated above, a mirroring of United States law and regulations by the Virgin Islands (by the method Congress established for Guam in 1972) already prohibited the Virgin Islands from collecting the tax. Thus, following enactment in 1972 of the legislation as to Guam, there was no withholding on dividends paid in either direction between the United States and Guam and between the United States and the Virgin Islands.

As a final attempt to derive support for their position, petitioners cite a provision in the House Ways and Means

Committee version of what finally became the Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520 (Pet. 12-13). This provision would have abolished collection of the 30% withholding tax by the United States on dividends and interest paid on certain "portfolio investments" held by nonresident aliens and foreign corporations, but would have retained the tax for the Virgin Islands. There is no indication in the legislative history that the Committee recognized any authority of the Virgin Islands to withhold tax on the income of United States taxpayers. Instead, the Committee would only have preserved whatever authority the Virgin Islands already had, including the indisputable authority to collect the tax on payments to taxpayers foreign as to both the United States and the Virgin Islands. Petitioners inexplicably fail to note that in 1976, after the full House of Representatives had removed the proposed withholding tax exemption, the Senate Finance Committee reinstated it for interest income without preserving any authority for the Virgin Islands to collect the tax. H. R. 10612, 94th Cong., 2d Sess., 121 Cong. Rec. 10981 (daily ed. June 29, 1976); S. Rep. No. 94-938, 94th Cong., 2d Sess. 258-61 (1976).[21] No Congressional consensus, let alone legislation, developed on this issue.

[21] The full Senate deleted this exemption, and it was never enacted. 121 Cong. Rec. 12508 (daily ed. July 26, 1976).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Dated: January 20, 1978

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